

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

05-CR-6068L

v.

GLENN HARPER,

Defendant.

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This Court referred pretrial matters in this criminal case to United States Magistrate Judge Marian W. Payson. Defendant, Glenn Harper (“Harper”), filed motions and, after conducting a suppression hearing, Magistrate Judge Payson issued a Decision and Order and Report and Recommendation (Dkt. #112). In that portion of the document constituting her Report and Recommendation, Magistrate Judge Payson recommended that Harper’s motion to suppress evidence relating to the seizure of a shotgun at 151 Third Street, Rochester, New York on September 20, 2004, be denied. In her Decision and Order, Magistrate Judge Payson denied the defense request for disclosure of confidential informants and also denied inspection and disclosure of grand jury minutes.

Harper filed Objections (Dkt. #114) and challenges Magistrate Judge Payson’s recommendation to deny the motion to suppress as well as the Magistrate Judge’s decision that confidential informants need not be disclosed.

The matter is now before me for review. I have reviewed Magistrate Judge Payson's Report and Recommendation/Decision and Order, the objections of Harper and the Government's response to those objections (Dkt. #116). The transcript of the suppression hearing (Dkt. #107) has also been prepared and available for this Court's review.

**Motion to Suppress:**

Magistrate Judge Payson determined that the owner of the residence at 151 Third Street, Joseph Harper, defendant's father, knowingly and voluntarily consented to the search of the premises. He executed a consent-to-search form on the day of the search. After reviewing Magistrate Judge Payson's Report and Recommendation, the submissions of the parties and the transcript, there is no evidence to believe that defendant's father was coerced, forced or threatened to induce his consent. In fact, the police were at the residence based on a complaint and request for assistance made by Mr. Harper and his wife based on the fact defendant allegedly threatened them both with a shotgun. Defendant was in the house at the time the police arrived and originally refused to leave. All of this is certainly consistent with the testimony of the officers, unrebutted at the suppression hearing, that defendant's father sought police assistance because of defendant's threats. The clear inference is that they wanted the police to assist by search the premises and removing the firearm.

I see no basis to reverse or modify Magistrate Judge Payson's decision on this point, and I accept and adopt the Report and Recommendation in its entirety.

**Disclosure of Informants:**

Magistrate Judge Payson also determined that Harper had failed to demonstrate entitlement to disclosure of the confidential informants. Magistrate Judge Payson noted that the Government represented that it did not intend to call either of the informants as witnesses at trial. Furthermore, as Magistrate Judge Payson noted, Harper is charged with firearms offenses based on searches conducted by law enforcement and the informants had nothing to do with those episodes.

Harper has been provided discovery in this case by virtue of Government disclosures and the several motions and hearings that had been held. Therefore, I agree with Magistrate Judge Payson that at this time there is no basis or reason to disclose the identity of the confidential informants.

**CONCLUSION**

I accept and adopt the Decision and Order and Report and Recommendation of United States Magistrate Judge Marian W. Payson (Dkt. #112).

Defendant Glenn Harper's motion to suppress evidence (Dkt. #98) is denied. Furthermore, defendant's motion to compel the disclosure of confidential informants is denied and defendant's request for disclosure and inspection of grand jury proceedings and minutes is also denied.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", is written over a horizontal line.

DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
December 20, 2007.